

## Fair Political Practices Commission

### Memorandum

**To:** Chairman Schnur, Commissioners Garrett, Hodson, Montgomery, and Rotunda

**From:** John W. Wallace, Assistant General Counsel  
Scott Hallabrin, General Counsel

**Subject:** Adoption of Amendments to Regulation 18435 and Regulation 18450.4 -  
Requiring the phrase “paid for by” in campaign identification (Recommendation  
of the Chairman’s Task Force on the Political Reform Act)

**Date:** January 18, 2011

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**Proposed Commission Action and Staff Recommendation.** Adopt the proposed amendments to Regulation 18435 and Regulation 18450.4 that implement the recommendations of the Chairman’s Task Force on the Political Reform Act that the campaign disclosure rules of the Act<sup>1</sup> be enhanced by adding a requirement that the words “paid for by” be added to required identification.

**Reasons for the Proposed Amendments.** The 25-member Chairman’s Task Force on the Political Reform Act was formed in August 2010 by Chairman Schnur and was charged with proposing regulatory and statutory changes to the state’s 36 year-old campaign finance laws with the intent of updating and clarifying the Act. One proposal of the Task Force was to add a requirement that the words “paid for by” appear before required identification of committees and other persons in the Act. For example, Section 84305(a) provides:

“(a) Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization’s address is a matter of public record with the Secretary of State.

“(b) If the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

“(c) If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall be included in addition to the information required by subdivision (a).”

Regulation 18435(b) which implements that statute provides:

“(a) A ‘mass mailing’ has been made when over two hundred substantially similar pieces of mail have been sent within a calendar month.

“(b) The sender, as used in Government Code Section 84305, is the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing, and posting of the mailing which are reportable under Government Code Sections 84200-84217.

“(c) For purposes of this section to ‘pay for’ a share of the cost of a mass mailing means to make, to promise to make, or to incur an obligation to make, any payment:

“(1) To any person for the design, printing, postage, materials or other costs (including salaries, fees, or commissions) of the mailing; or

“(2) As a fee or other consideration for an endorsement or, in the case of a ballot measure, support or opposition, in the mailing.”

The California Supreme Court identified the purpose of the disclosure required by Section 84305 as narrowly tailored to serve a compelling state interest: “to provide the voters with important information to assist them in making a reasoned choice at the polls, the ultimate expression of their First Amendment rights.” (*Griset v. Fair Political Practices Com* (1994) 8 Cal. 4th 851 at 866) “The primary interest asserted by the FPPC in support of the statute at issue -- to provide the voters with information to aid them in making their choices at the ballot box--is virtually identical to the primary interest asserted by the federal government in *Buckley v. Valeo* (1976) 424 U.S. 1, 66-67 [46 L.Ed2d 659, 714-715]: that is, to assure that the electorate has information regarding the source of political campaign funds so as to enable the voters to better evaluate candidates for public office.” (*Griset v. Fair Political Practices Com.*, *supra*, at 862.)

Thus, the existing regulation, while implementing the literal language of the statute, does not fully implement the purposes behind the disclosure requirement. Task Force members noted:

“Illustrating why this is needed, two mailers this campaign season were sent out in the form of slate mailers, but apparently they were not. They highlighted the California Professional Firefighters and National Organization for Women, supporting three statewide down-ballot candidates. The way the mailers were formatted, with the official logos of the endorsing organizations highlighted

on both sides, would lead any reasonable voter to conclude that the organizations paid for the mailers. But in the upper left-hand corner - in little tiny type - are the names and addresses of the three candidates' campaigns. Presumably the three candidates' campaigns pooled their resources and sent the mailer - a common practice for under-funded down-ticket campaigns. But the mailers do not expressly say that. This is hardly egregiously deceptive, but the true source of the mailers is not readily apparent."

The addition of the "paid for by" text in the required identification further implements the purpose of the statute to allow the public to easily identify who paid for the mailer.<sup>2</sup>

Similarly, the identification in the advertising disclosure provisions of Section 84504, as construed by Regulation 18450.4, lacks this implicit requirement of the statute. Regulation 18450.4(b) provides in pertinent part:

"(b) Where a 'disclosure statement' or 'disclosure' is required for an advertisement under Sections 84503, 84504, 84506, or 84506.5, the following shall apply to the committee that authorized and paid for the advertisement:

"(1) Disclosures required under Sections 84503 and 84506 shall include the name, pursuant to Regulation 18450.3, of the \$50,000 contributor or contributors. The disclosure shall explicitly indicate that the contributor or contributors were major donors to the committee by stating, for example, "major funding by" or "paid for by." In the case of a contributor that is a committee pursuant to Section 82013(a), the word "committee" shall be included in the disclosure. The aggregation rules of Regulation 18215.1 shall apply in determining when a contributor has reached the \$50,000 disclosure threshold of Sections 84503 and 84506.

"(2) Where two or more contributors of identical amounts meet the threshold for the top two contributors, the order of disclosure shall be made beginning with the most recent contributor of that amount.

"(3) The disclosures required by Sections 84503, 84504, 84506, and 84506.5 shall be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of the person(s) or committee(s) that paid for the communication, as specified ...."

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<sup>2</sup> A large number of other jurisdictions have the same requirement proposed here. For example, Alaska advised in the election FAQ: "What kind of 'paid for by' identifier must be placed on a political communication created by a candidate or an individual? Clearly identify all political communications with the words 'paid for by' followed by the name and address or principal place of business of the person paying for the communication." A cursory review of other laws found similar requirements imposed by the FEC, Missouri, Minnesota, Indiana, Iowa, Montana, Delaware, and North Dakota.

By amending Regulation 18450.4 to add the text “paid for by” further implements the purpose of this statute and regulation to allow the public to discern who paid for the mailer.

**Proposed Amendments to Regulation 18435 and Regulation 18450.4**

The proposed amendment to Regulation 18435 simply adds a new paragraph (d) which provides:

“The identification required by Section 84305 shall be preceded by the words ‘Paid for by.’ These words shall be presented in the same size and color as the identification required by Section 84305, and shall be immediately adjacent and above or immediately adjacent and in front of the required identification.”

Similarly, Regulation 18450.4(b)(1) is amended to add the following:

“Disclosures shall include “paid for by” in the same manner as, and immediately adjacent to and above, or immediately adjacent to and in front of, the required identification. In addition, disclosure Disclosures required ~~under~~ by Sections 84503 and 84506 shall include the name, pursuant to Regulation 18450.3, of the \$50,000 contributor or contributors. The disclosure shall explicitly indicate that the contributor or contributors were major donors to the committee by stating, for example, “major funding by” ~~or “paid for by.”~~ “committee contributors:” or “top contributors:” In the case of a contributor that is a committee pursuant to Section 82013(a), the word “committee” shall be included in the disclosure. The aggregation rules of Regulation 18215.1 shall apply in determining when a contributor has reached the \$50,000 disclosure threshold of Sections 84503 and 84506.”

By adding the language to this general subdivision in 18450.4(b)(1), we make the requirement apply to the methods of communication detailed in (b)(3) of the regulation (video, audio, print, and electronic media).